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November 16, 2021

Ms. Jocelyn Boyd  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
Synergy Business Park, The Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

**Re: Generic Docket to Study and Review Prefiled Rebuttal and Surrebuttal Testimony  
in Hearings and Related Matters  
Docket No. 2021-291-A**

Dear Ms. Boyd:

The Commission has asked for “comments and thoughts on procedure, substance requirements, and timelines for pre-filed testimony and exhibits, including the need for pre-filed rebuttal and/or surrebuttal testimony versus reserving rebuttal and/or surrebuttal testimony to be provided live during the hearing.” The following comments and thoughts are offered by M. John Bowen, Jr. and Margaret M. Fox for use by the Commission. Bowen is a prior General Counsel of the Commission, and Bowen and Fox have represented clients before the Commission in numerous proceedings over the last several decades.

As with direct testimony and exhibits, any rebuttal and surrebuttal testimony and exhibits should be pre-filed. This ensures that all parties and the Commission are apprised of what the various parties will be presenting, and keeps surprise to a minimum. Pre-filing testimony historically has reduced the need for extensive pre-hearing discovery in many cases. Pre-filing testimony allows the parties and the Commission to better prepare for the case, allowing the Commission to focus on the facts and reach the best determination it can for the consumers of the State.

This is particularly important for rebuttal testimony. Typically, the moving party pre-files direct testimony and exhibits first. All other parties then pre-file their direct testimony and exhibits, which also gives them an opportunity to respond to the moving party’s direct testimony.

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Rebuttal testimony is important and should be preserved as a matter of right, because it is the moving party's only opportunity to respond to the direct testimony filed by all other parties.

Surrebuttal testimony is somewhat different, because at that point in the proceeding both parties have submitted their direct testimony and exhibits, and have also had an opportunity to respond to the other parties' testimony and exhibits. The theory and purpose of surrebuttal testimony was to respond to any new matters brought up by the moving party in its rebuttal testimony. However, if rebuttal is limited to responding to other parties' direct testimony, as intended, surrebuttal should rarely (if ever) be necessary. That is why historically it has been within the Commission's discretion to allow surrebuttal testimony. To the extent the Commission believes the privilege of filing surrebuttal has been or is being abused, we believe the Commission has the authority to curb such abuses by limiting the scope or presentation of surrebuttal testimony on a case-by-case basis.

We appreciate the Commission's solicitation of comments on this important matter of procedure. We reserve the right to comment further as the Commission continues its consideration of this matter.

Very truly yours,

/s/ M. John Bowen, Jr.

M. John Bowen, Jr.

MJB/lhd

cc: Parties of record via e-mail